

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 04.04.2007

Coram

The Honourable Mr. Justice P. SATHASIVAM

and

The Honourable Mr. Justice S. TAMILVANAN

W.A. No.3063 of 2004

and

W.A.M.P. No.5673 of 2004

N. Chinnadurai

... Appellant

..Vs..

1. B. Jyothimani

2. Joint Commissioner,
H.R. & C.E. Admn. Department,
Coimbatore.

3. Assistant Commissioner,
H.R. & C.E. Admn. Department,
Fit Person, Arulmigu Amana
Lingeswarar Thirukoil,
Thirumoorthy Hills,
Udumalpet Taluk,
Coimbatore District.

4. Executive Officer,
Arulmigu Amana Lingeswarar
Thirukoil,
Thirumoorthy Hills,
Udumalpet Taluk,
Coimbatore District.

... Respondents

Appeal to set aside the order dated 29.6.2004 passed in W.P. No.18204 of 2004 on the file of this Court. To issue a writ of mandamus directing the respondents 1 to 3 to hold an auction of the lease hold right to run the shop selling tea, Coffee, and other food items near Arulmighu Amana lingeshwarar Thirukoil, Thirumoorthy Hills, Udumalpet Taluk, Coimbatore District in accordance with the Religious Institutions (Lease of Immovable Property) Rules, 1963 framed under section 116 of the Hindu Religious & Charitable Endowments Act.

For Appellant : Ms. B. Poornima Kumar
For Respondents : Mr. V. Nicholas for R1

Mr. R. Subramanian,
Govt. Advocate for R2 and R3

Mr. T. Chandrasekaran
for H.R. & C.E. for R4

JUDGMENT

(Judgment was delivered by P. SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned Single Judge dated 29.6.2004 passed in W.P. No.18204 of 2004, in and by which, the learned Judge, on the basis of the concession given by the learned Special Government Pleader, ordered the writ petition as prayed for. The fourth respondent in the writ petition is the appellant in this appeal.

2. Heard the learned counsel appearing for the appellant and the respondents.

3. The first respondent herein/writ petitioner filed the said writ petition, praying to issue a writ of mandamus, directing respondents 1 to 3 therein to hold an auction of the leasehold right to run the shop, selling tea, coffee and other food items near Arulmighu Amana Lingeshwarar Thirukoil, Thirumoorthy Hills, Udumalpet Taluk, Coimbatore District in accordance with the Religious Institutions (Lease and Immovable Property) Rules, 1963 framed under Section 116 of the Hindu Religious and Charitable Endowments Act.

4. It is not in dispute that the present appellant has been shown as fourth respondent in the said writ petition. It is also relevant to mention that even in paragraph 6 of the affidavit filed in support of the writ petition, the petitioner himself has stated that pursuant to the auction conducted on 11.6.2004, the said contract was entrusted to the fourth respondent therein for the lease amount of Rs.2,80,250/-. In such

circumstances, it is not clear as to how the learned Special Government Pleader, who appeared for respondents 1 to 3 therein, consented before the learned Judge for issuing direction as prayed for in the writ petition. Even otherwise the appellant herein - fourth respondent in the writ petition should have been heard before passing any order being a party to the writ petition. The said order was passed at the admission stage, only after hearing the learned Special Government Pleader, who took notice for respondents 1 to 3. The order clearly shows that no one represented the fourth respondent - present appellant before us.

5. It is also brought to our notice that pursuant to the auction dated 11.6.2004, the fourth respondent therein/appellant herein completed his period, by virtue of interim order in the writ appeal and as on date, he has no grievance, except pointing out the fact that the order dated 29.6.2004 came to be passed without notice to him and affording opportunity to put forth his case. Further, it is not a case of mere direction for disposal of the representation. Though public auction is the best method, the fact remains that the appellant herein was awarded contract in the private auction that held on 11.6.2004.

6. In such circumstances, whether such auction was right or wrong should have been decided only after affording opportunity to him. Unfortunately, such recourse was not followed while passing order in the main writ petition. Accordingly, we set aside the order dated 29.6.2004 in W.P. No.18204 of 2004. It is made clear that the Official respondents viz. Respondents 2 to 4 herein are directed to follow the rules applicable to them.

7. With the above observations, the writ appeal is allowed. Consequently, the connected W.A.M.P. is closed. No costs.

ssa.

सत्यमेव जयते

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. Joint Commissioner,
H.R. & C.E. Admn. Department,
Coimbatore.

2. Assistant Commissioner,
H.R. & C.E. Admn. Department,
Fit Person, Arulmigu Amana
Lingeswarar Thirukoil,
Thirumoorthy Hills,
Udumalpet Taluk,
Coimbatore District.

3. Executive Officer,
Arulmigu Amana Lingeswarar
Thirukoil,
Thirumoorthy Hills,
Udumalpet Taluk,
Coimbatore District.

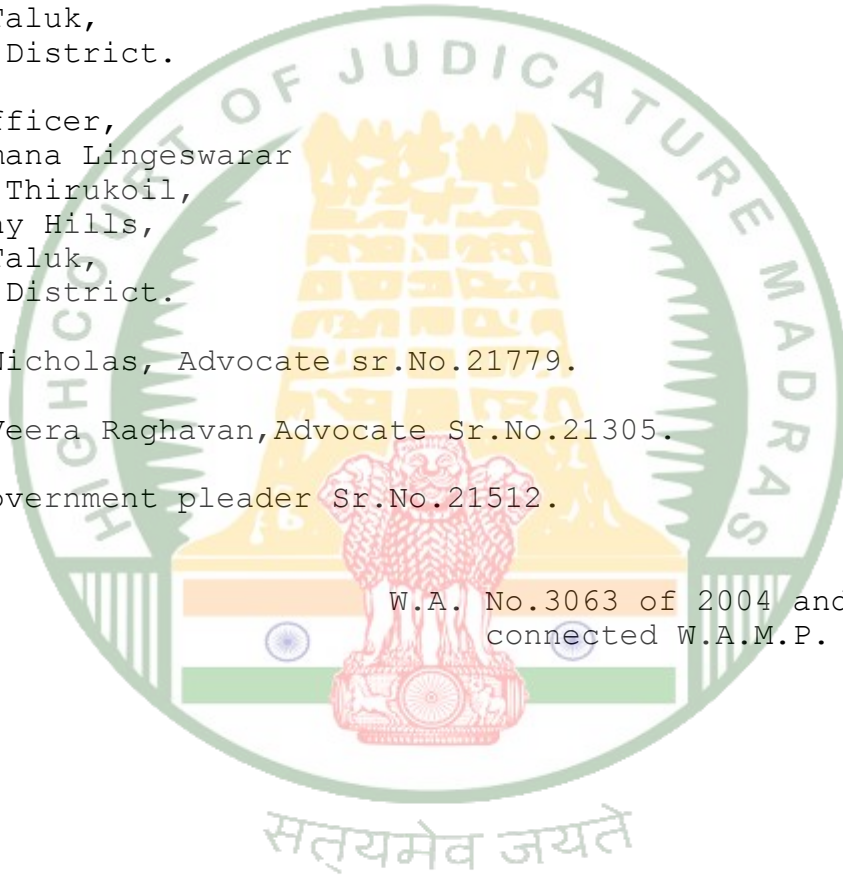
+1 cc to Mr.V.Nicholas, Advocate sr.No.21779.

+1 cc to Mr.R.Veera Raghavan, Advocate Sr.No.21305.

+1 cc to the Government pleader Sr.No.21512.

SSV(CO)
dcp/16.4.07

W.A. No.3063 of 2004 and
connected W.A.M.P.



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